

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VERNETTA STEELE and DEPARTMENT OF JUSTICE,  
IMMIGRATION & NATURALIZATION SERVICE, Los Angeles, CA

*Docket No. 00-175; Submitted on the Record;  
Issued February 26, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issues are: (1) whether appellant sustained an emotional condition while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On June 30, 1998 appellant, then a 53-year-old applications clerk, filed a notice of traumatic injury claiming that on June 26, 1998 she experienced shock, trauma, high blood pressure, chest pains, difficulty breathing, upset stomach and constipation as a result of receiving a June 26, 1998 notice of proposed removal. The letter stated, however, that appellant was to return to full-time regular duty or submit updated medical documentation to support continued modified duty for a back injury. The letter also indicated that if appellant should fail to submit the requested information, administrative action may be initiated, which may include removal from the service.

By decision dated July 23, 1998, the Office denied appellant's claim since she did not establish any compensable factors of employment. Appellant requested an oral hearing, which was held on February 22, 1999.

Appellant submitted a May 13, 1998 note from Dr. Cuthbert W. Pyne, who stated that appellant could work 40 hours per week effective May 20, 1998 with restrictions. Appellant's restrictions, per Dr. Pyne, were 5 hours of sitting, no twisting, lifting up to 15 pounds and sitting in an anchored chair.

By decision dated May 3, 1999, the hearing representative affirmed the Office's July 23, 1998 decision.

By letter dated August 10, 1999, appellant requested reconsideration. Appellant submitted evidence already contained in the record, including a work capacity evaluation, a May 13, 1998 note from Dr. Pyne, a personal statement and an absence note. The only new

evidence appellant submitted was a statement dated August 9, 1999. Appellant's request for reconsideration was denied on August 24, 1999.

The Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of his federal employment. To establish that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>1</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. On the other hand, where disability results from an employee's emotional reaction to her regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>2</sup>

The initial question is whether appellant has substantiated a compensable factor of employment as contributing to her emotional condition. Appellant alleged that the June 26, 1998 letter was a notice of proposed removal when it was actually a notice advising her to return to full time full duty on July 6, 1998. Appellant was advised to submit updated medical evidence to support continued modified duty and if not, failure to provide the requested information may have resulted in administrative action, including removal. Appellant alleged that this letter was issued in error because it did not apply to her. The Board notes that this letter did apply to appellant since appellant was working with restrictions as of May 20, 1998. The June 26, 1998 letter informed appellant that she was to return to full-time, full-duty work with no restrictions.

The Board has also held that emotional conditions resulting from actions taken by the employing establishment in personnel matters such as use of leave or benefits are not sustained within the performance of duty.<sup>3</sup> Since the letter appellant claimed caused her emotional condition was a personnel matter, it is not a compensable factor of employment. Since no

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<sup>1</sup> *Vaile F. Walders*, 46 ECAB 822 (1995).

<sup>2</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>3</sup> *Anthony Zarcone*, 44 ECAB 751 (1993).

compensable factor of employment has been established, the Board will not address the medical evidence.<sup>4</sup>

The Board also finds that the Office acted within its discretion in refusing to reopen appellant's case for further consideration of the merits of her claim.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>5</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.<sup>6</sup>

In support of her August 10, 1999 request for reconsideration, appellant submitted mostly duplicate evidence. The Board has found that evidence that repeats or duplicates evidence already in the record has no evidentiary value and does not constitute a basis for reopening a case.<sup>7</sup> The only new evidence appellant submitted was a statement dated August 9, 1999. In the statement appellant restated her argument that the employing establishment erred or acted abusively in issuing the June 26, 1998 letter and did not allege any new compensable factors of employment.

As appellant's August 10, 1999 request for reconsideration did not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying that request.

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<sup>4</sup> *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> 20 C.F.R. §§ 10.606.

<sup>7</sup> *Paul Kovash*, 49 ECAB 350 (1998).

The August 24 and May 3, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
February 26, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member